



# COMMONWEALTH of VIRGINIA

## CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

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Members of the York County Board of Zoning Appeals  
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To Whom It May Concern:

The Chesapeake Bay Local Assistance Department (Department) has reviewed the staff memorandum and the application for an exception submitted by Mr. Paul Evans, Jr. of 1120 Wormley Creek Drive in York County. In this instance, the applicant is seeking an exception to remove 18 trees, regrade the slope, and install a retaining wall within the seaward 50 feet of the Resource Protection Area buffer. As indicated in the staff memorandum to the Board, the County requested technical and procedural assistance from the Department in this case, and we would like to provide comments to be considered by the York County Board of Zoning Appeals. While the memorandum prepared by Anna Drake provides a summary of the project and an analysis of five of the "performance criteria", it does not address any of the findings in Article IX Section 24.1-901(d) of the York County Code that must be met in order for the Board to grant the exception.

As you know, Section 24.1-901(d) of the York County Code requires that the following conditions be satisfied in order for the Board of Zoning Appeals to authorize a variance to the Chesapeake Bay Preservation Areas Regulations. The Department offers the following analysis of these conditions with respect to exception request #02-9 as submitted by Mr. Evans on April 19, 2002.

1. *The application shall not be based upon conditions or circumstances that are self-created or self-imposed. The exception must be given to alleviate requirements imposed by the implementation of section 24.1-372 and shall not afford a special privilege or mere convenience sought by the applicant.*

**CBLAD response:** According to the application and Mr. Evans' statements at the site visit on April 12, 2002, **the purpose of the project is to improve the aesthetics of the property, reduce the likelihood of children falling on the slope, and to stabilize the soil on the sloped bank.** During the site visit on April 12, 2002 by County staff, the Department, and the Shoreline Erosion Advisory Service (SEAS) staff of the Department of Conservation and Recreation, there was no evidence of bank erosion observed that would necessitate grading and filling within the buffer and installing a retaining wall. Although there were portions of the slope that were somewhat steep, there did not appear to be any major safety concerns along much of the slope. It is worthwhile to mention that the landowner has the "by right" option to construct an access path to the creek that would permit safe access to the water without a major land disturbance or significant removal of vegetation. It is therefore the opinion of the Department that the proposed actions would be an optional landscaping project and a "mere convenience" sought by Mr. Evans.

2. *The physical characteristics of the property and existing development must be such that, in the opinion of the board of zoning appeals, there exists no other reasonable option or location outside of the required buffer area.*

**CBLAD response:** As the sloped area is contained wholly within the Resource Protection Area buffer, there is not an option to locate the proposed retaining wall outside the required 100-foot buffer area.

3. *The application shall be for the minimum exception necessary to afford relief.*

**CBLAD response:** As stated in the Department's site visit notes that have been attached to the County staff report, there appear to be viable, non-structural options available to the landowner that would effectively prevent soil erosion from occurring on the property. Representatives from SEAS, the Department, and York County provided the landowner with several vegetative options at the April 12<sup>th</sup> site visit. As noted on the site visit, the adjacent property has a similarly sloping bank that has been vegetated by the landowner and is currently completely stabilized. Therefore, it is the Department's position that there are viable, non-structural options available that would eliminate the need for an exception while still achieving the desired outcome of the project, which, according to the application, is stabilization of the slope and augmentation of the non-tidal and tidal wetlands on the site.

4. *Reasonable and appropriate measures shall be proposed in order to maintain or reduce the predevelopment nonpoint source pollution runoff load of the property. The proposed development shall not effectively increase the pollution runoff load.*

**CBLAD response:** Although the applicant is proposing to re-vegetate the affected area with trees, shrubs, and mulch beds, it is the opinion of the Department that severely altering the natural grade of the landscape and removing considerable amounts of existing vegetation to install the retaining wall will cause excessive land disturbance and may

effectively increase the pollutant runoff load. The existing buffer on the property is currently providing adequate runoff control and, with additional management of the buffer vegetation (as suggested by SEAS), the buffer should be able to mitigate the increased impervious surfaces that will be installed when the residence is constructed.

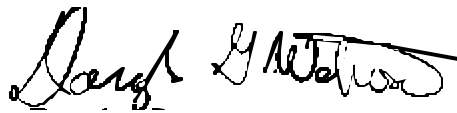
5. *The application shall be consistent with the purpose and intent of section 24.1-372, and not injurious to the neighborhood or otherwise detrimental to the public welfare.*

**CBLAD response:** Neither the Department, SEAS, nor County staff were able to identify any evidence of an existing erosion problem on Mr. Evans' property during the April 12, 2002 site visit. Therefore, the Department considers the land disturbance, tree removal, and installation of a retaining wall to be unnecessary and inconsistent with the purpose and intent of Section 24.1-372 (Chesapeake Bay Preservation Area regulations). The Department has consistently taken this position with similar exception requests for landscaping within the buffer.

In addition, the property owner is requesting to install a pool within the 100-foot buffer as part of an administrative buffer modification. While Section 24.1-372(f)(7) c.3 of the York County Code allows administrative relief for the construction of a principal structure and necessary utilities within the 100-foot buffer on lots created prior to October 1, 1989, a pool is not considered to be part of the principal structure and is therefore not authorized to be approved administratively. The request for a pool in the buffer must go before the Board of Zoning Appeals as part of the exception request. Furthermore, it has been the continued opinion of the Department that these "accessory" structures are generally not eligible for administrative or Board relief due to the nature of these structures being mere conveniences and not necessary for the reasonable use of the property.

Thank you for the opportunity to comment on this exception application. If you have any questions or concerns, please do not hesitate to contact me at 1-800-243-7229.

Sincerely,



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Principal Environmental Planner

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Shawn Smith  
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